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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHAOSTRON INSTRUMENT
AND ELECTRONIC
COMPANY,

Defendant.

Civil No.

COMPLAINT FOR COST
RECOVERY, INJUNCTIVE
RELIEF, AND CIVIL PENALTIES

1 The United States of America, by and through the undersigned attorneys, by
2 the authority of the Attorney General of the United States and at the request of and
3 on behalf of the United States Environmental Protection Agency (“EPA”), alleges
4 the following:

5 STATEMENT OF THE CASE

6 1. This is a civil action brought pursuant to Sections 106 and 107 of the
7 Comprehensive Environmental Response, Compensation, and Liability Act, as
8 amended (“CERCLA”), 42 U.S.C. §§ 9606, 9607, against Phaostron Instrument
9 and Electronic Company (“Phaostron” or “Defendant”). Pursuant to CERCLA
10 Sections 106 and 107, 42 U.S.C. §§ 9606, 9607, the United States seeks:
11 (1) recovery of unreimbursed costs incurred and to be incurred by it, together with
12 interest, for activities undertaken in response to the release or threatened release of
13 hazardous substances at the Baldwin Park Operable Unit of the San Gabriel Valley
14 Superfund Sites, Areas 1-4, in Los Angeles County, California (the “BPOU Area”
15 or “Site”); (2) performance of studies and response work by Defendant at the
16 BPOU Area consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as
17 amended); and (3) penalties of not more than \$27,500 for each day for violations
18 occurring before and including March 15, 2004, and not more than \$32,500 per
19 day for each day of violation after March 15, 2004, in which Defendant, without
20 sufficient cause, willfully violated, or failed or refused to comply with, EPA’s June
21 30, 2000 unilateral administrative order issued under Section 106 of CERCLA, 42
22 U.S.C. § 9606, and Section 7003 of the Solid Waste Disposal Act, as amended by
23 the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid
24 Waste Amendments of 1984 (collectively, “RCRA”), 42 U.S.C. § 6973, relating to
25 the BPOU Area. In addition, the complaint seeks injunctive relief pursuant to
26 Section 7003 of RCRA, 42 U.S.C. § 6973.

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3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c) because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district, and because Defendant resides in this district.

4. Phaostron is a “person,” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

5. Phaostron is a California corporation and a person who, at the time of disposal of a hazardous substance, owned and operated a facility from which there was a release, or a threatened release, of a hazardous substance that caused the incurrence of response costs.

6. The BPOU Area is located in the San Gabriel Valley in and near the cities of Azusa, Irwindale, Baldwin Park, and West Covina in Los Angeles County, California. The BPOU Area comprises a several mile long area of groundwater contamination in the San Gabriel Valley. The BPOU Area is a “facility” within the meaning and scope of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7. In October 1984, EPA placed the BPOU Area on the National Priorities List based on water quality information available at the time of listing. 40 C.F.R. Part 300, Appendix B. The BPOU Area is known as the San Gabriel Valley Area 2 Superfund Site.

8. Subsequent investigation by EPA and others revealed the tremendous extent of groundwater contamination in the San Gabriel Valley. During the past 25 years, more than one-quarter of the approximately 190 municipal water supply

1 wells in the San Gabriel Valley have been found to be contaminated, requiring
2 water companies to shut down wells, install new treatment facilities, and take other
3 steps to ensure that they can supply water meeting federal and State drinking water
4 standards.

5 9. From approximately October 1984 to April 1993, EPA undertook a
6 Remedial Investigation and Feasibility Study (“RI/FS”) for the BPOU Area,
7 pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300. In a
8 report dated April 2, 1993, EPA presented the results of the BPOU Area RI/FS.

9 10. EPA’s decision on the interim remedial action for the BPOU Area is
10 embodied in an interim Record of Decision (“ROD”), executed on March 31, 1994.
11 The ROD is supplemented by an Explanation of Significant Differences (“ESD”)
12 issued in May 1999. The selected interim remedy provides for the construction
13 and operation of groundwater extraction wells, treatment facilities, and conveyance
14 facilities capable of pumping and treating approximately 22,000 gallons per minute
15 of contaminated groundwater from the BPOU Area. This remedy is intended to
16 limit the movement of contaminated groundwater into clean or less contaminated
17 areas and depths, remove a significant mass of contamination from the
18 groundwater, and provide the data necessary to determine, in a subsequent final
19 Record of Decision, “in situ” cleanup standards for the BPOU Area.

20 11. Phaostron operated a facility at 717 North Coney Avenue in Azusa,
21 California (the “Coney Avenue property”), from approximately 1985 to the
22 present. Phaostron manufactured meters and other instruments for U.S. military
23 and aircraft applications and used chlorinated solvents for degreasing and parts
24 cleaning at the Coney Avenue property.

25 12. Phaostron reported using approximately 400 to 600 gallons per year of
26 perchloroethylene (“PCE”) through 1989. Phaostron reported three spills in 1988
27 and 1990 of less than one-half gallon of PCE and minor spillage of PCE at the
28 storage tank spigot. Solvents were disposed of at the Coney Avenue property.

1 13. In subsurface investigations at the Coney Avenue property, PCE,
2 trichloroethene, 1,1,1-trichloroethane, cis-1,2-dichloroethene, carbon tetrachloride,
3 and other chemicals have been detected in soil and/or soil vapor. These
4 investigations confirmed the presence of hazardous substances, as defined by
5 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and solid wastes, as defined
6 by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Coney Avenue
7 property.

8 14. The Coney Avenue property is a “facility” within the meaning and
9 scope of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

10 15. There was a “release” or a threat of a “release,” as defined by Section
11 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the
12 environment at and from the Coney Avenue property.

13 16. Hazardous substances, within the meaning of Section 101(14) of
14 CERCLA, 42 U.S.C. § 9601(14), and solid wastes, within the meaning of Section
15 1004(27) of RCRA, 42 U.S.C. § 6903(27), have been disposed of at the Coney
16 Avenue property.

17 17. Hazardous substances and solid wastes released from Defendant’s
18 facility have moved downward from the surface and through soil, contaminating
19 groundwater beneath the Coney Avenue property. The contamination has
20 generally migrated southward and westward from the Coney Avenue property,
21 leaving large plumes of contaminated groundwater in the BPOU Area.

22 18. The release or threat of release of one or more hazardous substances
23 from the Coney Avenue property and the BPOU Area may present an imminent
24 and substantial endangerment to the public health or welfare or the environment
25 under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The substances listed in
26 Paragraph 13 are solid wastes that may present an imminent and substantial
27 endangerment to health or the environment under Section 7003 of RCRA, 42
28 U.S.C. § 6973.

1 19. On or about January 3, 1997, EPA notified Phaostron that it
2 considered Phaostron, as the current operator of the Coney Avenue property, to be
3 potentially responsible for costs incurred in the investigation and clean-up of
4 groundwater contamination in the BPOU Area.

5 20. On June 30, 2000, EPA, pursuant to Section 106(a) of CERCLA, 42
6 U.S.C. § 9606(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, issued to nineteen
7 potentially responsible parties (“PRPs”), including Phaostron, a unilateral
8 administrative order (“Order”), requiring each of them to perform at the BPOU
9 Area the remedial action activities set forth in the ROD as supplemented by the
10 ESD. The effective date of the Order was July 10, 2000.

11 21. In issuing the Order, EPA found that the release or threat of release of
12 one or more hazardous substances and solid wastes from the Site may present an
13 imminent and substantial endangerment to health, welfare, and the environment
14 under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and Section 7003 of
15 RCRA, 42 U.S.C. § 6973. EPA also found that the actions required by the Order
16 were necessary to protect the public health, welfare, and the environment.

17 22. A group of nine PRPs are complying with EPA’s Order by
18 implementing a joint cleanup and water supply project with certain water
19 purveyors in the San Gabriel Valley. Phaostron is not performing the work
20 required by the Order.

21 FIRST CLAIM FOR RELIEF
22 Injunctive Relief under CERCLA Section 106

23 23. The allegations contained in Paragraphs 1 - 22 are realleged and
24 incorporated by reference herein.

25 24. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in
26 pertinent part:

27 [W]hen the President determines that there may be an imminent and
28 substantial endangerment to the public health or welfare or the environment
because of an actual or threatened release of a hazardous substance from a
facility, he may require the Attorney General of the United States to secure

1 such relief as may be necessary to abate such danger or threat, and the
2 district court of the United States in the district in which the threat occurs
3 shall have jurisdiction to grant such relief as the public interest and the
4 equities of the case may require.

5 25. Defendant is liable as a person who, at the time of disposal of
6 hazardous substances, operated a facility at which such hazardous substances were
7 disposed of, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C.
8 § 9607(a)(2).

9 26. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),
10 Defendant is jointly and severally liable to Plaintiff for injunctive relief to abate
11 and remedy the imminent and substantial endangerment to public health or welfare
12 or the environment presented by the BPOU Area.

13 **SECOND CLAIM FOR RELIEF**
14 **Response Costs under CERCLA Section 107**

15 27. The allegations contained in Paragraphs 1 - 22 and 25 are realleged
16 and incorporated by reference herein.

17 28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that the
18 owner and operator of a vessel or a facility from which there is a release, or a
19 threatened release, of a hazardous substance that causes the incurrence of response
20 costs shall be liable for all costs of removal or remedial action incurred by the
21 United States Government not inconsistent with the National Contingency Plan.

22 29. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in
23 pertinent part that, in any action for recovery of costs: “the court shall enter a
24 declaratory judgment on liability for response costs or damages that will be
25 binding on any subsequent action or actions to recover further response costs or
26 damages.”

27 30. The actions taken by the United States in connection with the Site
28 constitute “response” actions within the meaning of Section 101(25) of CERCLA,
42 U.S.C. § 9601(25), in connection with which the United States has incurred

1 costs.

2 31. The costs incurred by the United States in connection with the Site are
3 not inconsistent with the National Contingency Plan, which was promulgated
4 under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R.
5 Part 300.

6 32. As of June 30, 2004, the United States had incurred response costs in
7 connection with the Site of approximately \$32.1 million. The United States has
8 received reimbursement to date in the sum of approximately \$11.4 million. The
9 United States continues to incur response costs in connection with the Site.

10 33. Defendant is jointly and severally liable to the United States for all
11 response costs incurred and to be incurred by the United States in connection with
12 the Site, including enforcement costs and prejudgment interest on such costs,
13 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

14 **THIRD CLAIM FOR RELIEF**
15 **Injunctive Relief under RCRA Section 7003**

16 34. The allegations contained in Paragraphs 1 - 22 are realleged and
17 incorporated by reference herein.

18 35. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides in pertinent
19 part:

20 [U]pon receipt of evidence that the past or present handling, storage,
21 treatment, transportation or disposal of any solid waste or hazardous waste
22 may present an imminent and substantial endangerment to health or the
23 environment, the Administrator may bring suit . . . against any person
24 (including any past or present generator, past or present transporter, or past
or present owner or operator of a treatment, storage, or disposal facility) who
has contributed or who is contributing to such handling, storage, treatment,
transportation or disposal . . . to order such person to take such . . . action as
may be necessary

25 36. Defendant is a person who has contributed or is contributing to the
26 past or present handling, storage, treatment, transportation and/or disposal of solid
27 waste at the BPOU Area.

28 37. EPA has evidence that the past or present handling, storage, treatment,

1 transportation and/or disposal of solid waste at the BPOU Area may present an
2 imminent and substantial endangerment to health or the environment.

3 38. Notice of this suit has been provided to the State of California in
4 accordance with Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

5 39. Pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a),
6 Defendant is jointly and severally liable to Plaintiff for injunctive relief to abate
7 and remedy the imminent and substantial endangerment to health or the
8 environment presented by the BPOU Area.

9 FOURTH CLAIM FOR RELIEF
10 Civil Penalties under CERCLA Section 106

11 40. The allegations contained in Paragraphs 1 - 22 and 25 are realleged
12 and incorporated by reference herein.

13 41. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), provides as
14 follows:

15 Any person who, without sufficient cause, willfully violates, or fails or
16 refuses to comply with, any order of the President under subsection (a) of
17 this section may, in an action brought in the appropriate United States
district court to enforce such order, be fined not more than \$25,000 for each
day in which such violation occurs or such failure to comply continues.

18 Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and
19 40 C.F.R. §§ 19.2, 19.4 (Table), civil penalties of up to \$27,500 per day per
20 violation may be assessed for violations occurring after January 30, 1997, and
21 penalties up to \$32,500 per day per violation may be assessed for violations
22 occurring after March 15, 2004.

23 42. Defendant has, without sufficient cause, failed or refused to comply
24 with the terms of the Order issued by EPA pursuant to Section 106(a) of CERCLA,
25 42 U.S.C. § 9606(a).

26 43. Defendant is subject to civil penalties of not more than \$27,500 per
27 day for each day of noncompliance with the Order pursuant to Section 106(b)(1) of
28 CERCLA, 42 U.S.C. § 9606(b)(1) for violations occurring before and including

1 March 15, 2004, and not more than \$32,500 per day for each day of violation after
2 March 15, 2004.

3 PRAYER FOR RELIEF

4 WHEREFORE, Plaintiff, the United States, prays that this Court:

5 1. Order the Defendant to take all measures necessary to abate and
6 remedy the imminent and substantial endangerment to public health or welfare or
7 the environment presented by the BPOU Area.

8 2. Enter judgment in favor of the United States and against Defendant
9 for all costs, including prejudgment interest, incurred by the United States for
10 response actions in connection with the Site and not otherwise reimbursed;

11 3. Enter a declaratory judgment on liability for response costs or
12 damages that will be binding on any subsequent action or actions to recover further
13 response costs or damages;

14 4. Enter judgment against Defendant of up to \$27,500 for each day that
15 it failed to comply with EPA's Order for violations occurring before and including
16 March 15, 2004, and not more than \$32,500 per day for each day of violation after
17 March 15, 2004;

18 5. Award the United States its costs of this action; and
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1 6. Grant such other and further relief as this Court deems to be just and
2 proper.

3 Respectfully submitted,
4 FOR THE UNITED STATES OF AMERICA

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7 Date: _____

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